IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 450 OF 2007

Satish Nambiar,]
B-502, R.N.A. Heights, J.V.L. Road,]
Andheri (East), Mumbai-400 093] ...Petitioner

Versus

Union of India,]
through Ministry of Home Affairs,]
through its Secretary, Foreigners Division,]
Jaisalmer House, 26, Man Singh Road,]
New Delhi] ...
Respondents

Mr. V.T. Tulpule, instructed by Ms. Bharti L. Mahant,
for the petitioner.

Mr. B.A. Desai, Additional Solicitor General, assisted by
Mrs. U.V. Kejariwal and Ms. Naveena Kumari
for the respondents.

CORAM: **SWATANTER KUMAR, C.J**. &
S.C. DHARMADHIKARI, J.

Judgment reserved on : April 21, 2007
Judgment pronounced on : June 21, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

1. Rule. The respondents waive service. By consent, Rule is made returnable forthwith. Heard counsel appearing for parties.

2. The Central Government issued Overseas Citizen of India registration card bearing No. A 0202250 and life long Visa Sticker No. U-020250 dated 18th May, 2006 to the petitioner under the provisions of Section 7A(1) of the Citizenship Act, 1955, which was cancelled in public interest under the provisions of Section 7D (e) of the Citizenship Act vide order dated 14th February, 2007. The petitioner, Shri Satish Nambiar, in this petition challenges the legality and propriety of this order, inter alia, on the following grounds:-

   (i) The petitioner was entitled to a hearing prior to passing of the order dated 14th February, 2007, which apparently is

prejudicial to his interest; and withdraws the benefits granted to him in accordance with law;

(ii) The impugned order is not preceded by any enquiry and suffers from the element of non-application of mind and arbitrariness;

(iii) The impugned order clearly violates the constitutional mandate of equality before law, and is liable to be set aside.

3. The above grounds have to be examined by the Court in the light of the factual matrix, which emerges from the record of the case filed, and are that the petitioner was born in Mumbai on 14th January, 1950. He was employed as a driver with an American diplomat from 1973 to 1976, and in the year 1982, he was transferred to American Consulate General at Mumbai. The petitioner was appointed as a Works Control Clerk at the same Consulate. The petitioner was appointed as a Security Investigator at American Consulate, Mumbai in 1985. In the year 1999, he received special immigrant visa to

migrate to America. In order to take the benefit, the petitioner resigned from the Consulate, and left for America with his wife where he lived till the year 2005, and worked with private establishments.

4. In October, 2005, the wife of the petitioner came back to India to look after her ailing mother. The petitioner completed all formalities for obtaining permanent visa for his mother-in-law. As she refused to go to America, the petitioner came back to India in November, 2005. The petitioner applied for Overseas Citizen of India (OCI) Registration Card in April, 2006. The petitioner was granted the said registration card on 18th May, 2006 under the provisions of Section 7A(1) the Citizenship Act. After having obtained such card, the petitioner applied for a job with the American Consulate in Mumbai as a vacancy had arisen and he was appointed as Site Security Investigator on 26th June, 2006 with the Overseas Building Operation, American Consulate at Mumbai. Since then he continued to work on the said post till 20th February, 2007;

and after receiving the order dated 14th February, 2007, he left the job.

5. It is the case of the petitioner that there was no material before the respondents to take such a severe action and to cancel the registration card and permanent visa issued in favour of the petitioner by the competent authority in accordance with the provisions of the Act. According to the petitioner, he has no criminal record. No case has ever been registered against him. He has not violated any law for the time being in force; and behaved like a law-abiding citizen in India and in the United States of America.

6. Learned counsel appearing for the petitioner also placed reliance on the decision of the Supreme Court in the case of *Hasan Ali Raihali Vs. Union of India,* reported in A.I.R. 2006 S.C. 1714, and another decision of Supreme Court in the case of *Sarbanand Sonowal (II) Vs. Union of India,* reported in (2007) 1 S.C.C. 174.

7. In the reply-affidavit filed on behalf of the respondents-Union of India, it is stated that the petitioner is a foreigner governed by the Foreigners Act, 1946; and grant of OCI registration does not amount to granting Indian Citizenship. In terms of Article 9 of the Constitution of India and Section 9 of the Citizenship Act, once an Indian citizen acquires the citizenship of any foreign State, he ceases to be an Indian citizen and the action of the Government of India to grant and/or terminate the registration of an overseas citizen who is a foreigner is unfettered, absolute and taken in exercise of its sovereign power. The administrative decision dated 14th February, 2007, according to the respondents, cannot be the subject- matter of challenge under Article 226 of the Constitution of India.

8. The facts are really not much in controversy. It is specifically averred that the case of the petitioner was placed for post-verification of his antecedents by the security agency of the

Central Government; and in view of adverse report of the said agency, the OCI registration granted to the petitioner has been revoked. In this regard, reliance is placed upon the provisions of Rule 25-E of the Citizenship Rules, 1956 and Sections 7-A and 7-D of the Citizenship Act.

9. The learned Additional Solicitor General, with great emphasis, raised a preliminary issue that the petitioner, being a foreigner, was not entitled to claim any relief under Article 226 of the Constitution of India, as a foreigner is not entitled to claim any fundamental rights or guarantees enshrined in the Constitution, except the protection contained in Article 21 relating to personal liberty. It was also contended that the rights of a foreigner are confined to Article 21, and the petitioner cannot claim any right to settle or live in India once, in the opinion of the competent authority, it was not so desirable and decision of the authorities in that regard is beyond the purview of judicial review. The foreigner, while residing in India, cannot claim rights under Article 19 on the

principle of equality contained in Article 14 of the Constitution of India. In support of these contentions, he relies upon the judgments of the Supreme Court in the cases of (i) *Anwar* v. *The State of J. & K.*, AIR 1971 SC 327, (ii) *Louis De Raedt* v. *Union of India and others*, AIR 1991 SC 1886, (iii) *State of Arunachal Pradesh* v. *Khudiram Chakma*, AIR 1994 SC 1461, and (iv) *Sarbananda Sonowal* v. *Union of India and another*, AIR 2005 SC 2920. In fact, according to the learned counsel, even the procedure for interfering with personal liberty and deportation need not be just, fair and reasonable. In this regard, reliance is placed on the judgment of the Supreme Court in the case of *Sarbananda Sonowal* (supra).

10. Article 14 of the Constitution does not restrict its application only to the citizen, but commands the State not to deny equality before law or the equal protection of laws to any person. Article 14, thus, makes a general rule, which, of course, is capable of being deciphered by several circumstances justifying a differentiation. The reliance

placed by the learned counsel appearing for the Union of India on *Sarbananda Sonowal* (supra) is, again, not of much help to the Union of India. The facts of that case and the proposition of law enunciated in that case have hardly any application to the factual matrix of the case in hand. The petitioner was certainly not an illegal migrant at any point of time. He had entered India and was residing in India on the basis of permanent registration card and visa issued to him by the Competent Authority. In those cases the persons were illegal migrants, and the validity of the statute, i.e., the Illegal Migrants (Determination by Tribunals) Act, was in question, and the Court did observe that the Foreigners Act and Foreigners (Tribunal) Order, 1964, were applicable to the whole of India, even to the State of Assam, for identification of foreigners who have entered the territory between 1st January, 1966 and 24th March, 1971; and the procedure adopted for their deportation could hardly be questioned, and it was not open to the Union of India or the State or for anyone else to contend that the procedure prescribed in the

enactment was not just, fair and reasonable, and was violative of Article 21 of the Constitution of India. Providing of determination by a judicial Tribunal in regard to deportation was a fair procedure and could not be impugned. However, it may not be necessary for us to deliberate on these issues in any greater length, as we propose to discuss the various contentions raised on behalf of the petitioner, and record our findings thereupon, at the first instance.

11. A foreigner, not being a citizen, is not entitled to any right under Article 19 or to remain on Indian territory, though he may be entitled to rights under Article 21 or Article 22(1) and (2) of the Constitution, and would be entitled to claim even equality in that restricted sense of the term. There could be a reasonable differentiation like where an Indian detained under an order of detention, upon its revocation or setting aside by a Court of law, would be entitled to continuance of residence in India, while, upon hearing, may have to be deported or exiled in the discretion of the Competent

Authority. In that situation, a foreigner may not be able to claim equality before law. It is true that right of a foreigner would be restricted by virtue of operation of the provisions contained in the Foreigners Act, 1946; but to say that in no circumstances, a foreigner can claim benefit of Article 14 of the Constitution would not be an absolutely correct proposition of law. Unless the law or procedure of law specifically excludes the limited rights of a foreigner, he would be able to claim limited protection in terms of Article 14 of the Constitution of India.

12. The learned counsel appearing for the petitioner contended that the order dated 14th February, 2007 takes away the rights which were granted to the petitioner by the Competent Authority; and adherence to the principles of *audi alteram partem* was essential before the authority could withdraw the said benefits, and pass the impugned order. There is no doubt that the petitioner had been living in India and had gone abroad to U.S.A., where he stayed for a considerable period;

and during this period, he was employed by the American Consulate General at Mumbai, whereafter, he served in U.S.A. and then came back to India in November, 2005. At that time, he was employed, again, with the American Consulate as a Site Security Investigator.

13. The petitioner was granted the Registration Card and Permanent Visa on 18th May, 2006, which registration was revoked vide order dated 14th February, 2007. There is no dispute to the fact that the petitioner was not granted any pre-decisional hearing before the order was passed. According to the respondents, on the true construction of the relevant provisions and peculiar facts and circumstances of the case, no pre-decisional hearing was either necessary or even contemplated. Quite to the contrary is the contention of the petitioner that non-compliance with the principles of natural justice would vitiate the order.

14. Section 2(a) of the Foreigners Act, 1946 defines a 'foreigner' to mean a person who is not a citizen of India. Under Section 11 of the said Act, any authority empowered by or under the provisions of the Act could issue any directions or to exercise any other power as expressly provided under the Act; and take such steps as may be necessary.

15. The Citizenship Act, 1955 provides for the manner and methods by which a person could acquire a citizenship of India and its revocation. The expression 'foreigner' is not defined in this Act. However, Section 2(ee) interprets 'overseas citizen of India' who is of Indian origin, being a citizen of a specified country, which is stated in the Fourth Schedule. The Central Government have been vested with the power to grant registration of any person as an overseas citizen of India, subject to such conditions and restrictions as the Government may deem fit and proper and also confer, notwithstanding anything contained in any other law for the time being in force, to an overseas citizen of India

right in accordance with the provisions of Sections 7-A and 7-B. The registration granted under Section 7-A can be withdrawn / cancelled in terms of Section 7-D by the Central Government. The provisions of Section 7-D read as under:-

> "**7-D. Cancellation of registration as overseas citizen of India--**The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7-A if it is satisfied that--
>
> (a) the registration as an overseas citizen of India was obtained by means of fraud, false representation or the concealment of any material fact; or
>
> (b) the overseas citizen of India has shown disaffection towards the Constitution of India as by law established; or
>
> (c) the overseas citizen of India has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was to his knowledge carried on in such manner as to assist an enemy in that war; or
>
> (d) the overseas citizen of India has, within five years after registration under sub-section (1) of section 7-A, has been sentenced to imprisonment for a term of not less than two years; or
> (e) it is necessary so to do in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public."

Besides the power of the Government under the above provisions, a citizen of India, who has been granted any of the benefits shall cease to be a citizen of India if he is deprived of that citizenship by an order of the Central Government under that section. Thus, there cannot be any dispute that the Government is vested with the power to cancel the registration. This power is to be exercised by the authority in accordance with the provisions of the Act and in conformity with the basic rule of law.

16. It is necessary for us to examine, at this stage, the reasons on the basis of which the Union of India has passed the impugned order. This is primarily an administrative decision which the Competent Authority is expected to take with reference to the peculiar facts and circumstances of the case. As already noticed, the basic plea taken in the reply-affidavit is that post-verification of facts and circumstances of the petitioner by the appropriate Security Agency of the Central

Government had submitted an adverse report which necessitated the cancellation of the OCI Registration granted to the petitioner under Section 7-D(e) of the Citizenship Act, 1955, read with Section 7-D.

17. Despite the reply-affidavit, we had directed the learned Additional Solicitor General to produce before us the adverse remarks or material on the basis of which the impugned order was passed. The records were produced before us in a sealed cover, which we have opened during the course of hearing. The initial note, treated as secret, titled the same, was dated 13th of April, 2007, which we found did not explain the facts in their entirety and Union of India was called upon to bring the complete details, which were again brought in a sealed cover by way of an explanatory statement. We did not consider it appropriate to put on judicial record the entire contents of these two notes. Suffices it to say that according to the agency, the cancellation / revocation was necessary as otherwise, it would severely affect the sovereignty, integrity

and security of the country as well as the relationship with a foreign State. Having perused the said documents, we had directed the re-sealing of the envelope.

18. The scope of judicial review of such an administrative decision has to be confined to its prescribed limitations. The Court would not act as an Appellate Authority to examine the veracity of such reports, which relate to the security and sovereignty of the country. Within the limited ambit of the powers, we would still examine, at least *ex facie*, whether the decision suffered from the vice of arbitrariness, or it was necessary for the authority to comply with the principles of natural justice at the pre-decisional process. The petitioner had certainly been given a special treatment by the American Consulate General at Mumbai and had made a request for grant of special immigration status, as is clear from the letter dated 8th July, 1999 (Exhibit 'F' to the petition). In this very letter, the performance of duty of the petitioner as a Security Investigator was highly appreciated by the authority

concerned. In the recommendation issued by the Consul General of the United States of America, it was specifically observed as under:-

> "He has at times, volunteered to go out and observe at close hand the riots of 96 and 97 in Mumbai, to find out the potential threats to mission personnel and USG citizens, enabling the post to accurately report events as they occurred... Mr.Nambiar has shown the highest degree of devotion to American interests for more than 20 years and, with his skills and attitude, will make a valuable addition to the United States..."

These comments, surely, are favourable to the petitioner in relation to discharge of his duties; but they have also some relevancy and partially support the report of the Security Agency. The respondents have acted on the reports, which contained adverse comments, and there could be hardly any requirement on the part of the respondents to grant pre-decisional hearing to the petitioner, particularly keeping in view the fact that, according to the opinion of the special agency, this was likely to affect the security of the country and relationship with foreign countries. Compliance with the

principles of natural justice either by virtue of granting personal hearing or recording of reasons in support of such order, is normally, a pre-condition to passing of an administrative order having civil consequences vis-a-vis the rights of an individual; but this rule is not without exceptions. The framers of the law may exclude application of such principles by making such a provision or clause in the provisions themselves, or it may be irresistible, or by application of principles of necessary implications. It is not unknown to law that certain administrative orders could be passed without compliance with the principles of a*udi alteram partem*, of course, depending on the facts of the case and the law applicable to such a case. It is neither possible, nor practicable, to provide a strait-jacket formula, which is universally applied to all administrative actions or orders which may be passed by the authorities under the provisions of these Acts. Some of the instances excluding application of this solitary rule have been discussed in various judgments of different Courts.

19. A Division Bench of Delhi High Court in the case of *International Cargo Services v. Union of India & Anr.*, 120 (2005) Delhi Law Times 195, after referring to various judgments of the Supreme Court, held as under:-

> "7. The principles of natural justice have twin ingredients. Firstly, the person likely to be adversely affected by the action of the authorities should be given notice to show cause or granted reasonable opportunity of being heard in consonance with the maxim *audi alteram partem*. Secondly, the order so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of these principles normally would render an order particularly quasi-judicial in nature invalid. Violation of principles of natural justice is violation of basic rule of law and would invite judicial chasticism. However, this rule is not without exceptions. Of course, the exceptions to such a rule are rare. Where the legislative scheme of provisions of a statute suggest that intent of the Legislature is to take emergent action, in that event and subject to fulfilment of ingredients of the provisions, an order could be passed without affording pre-decisional hearing and an expeditious post-decisional hearing may amount to substantial compliance with the basic rule of law. Regulation 20(1) [of the Custom House Agent Licence Regulations, 2004] empowers the Commissioner of Customs to revoke the licence of an agent and even order forfeiture of part or whole security. This action could be taken restricted to the grounds spelt out in the regulation itself. This power can hardly be

invoked by the authorities for instantly revoking a licence while under 20 Regulation (2) of the Regulations the same authority may in appropriate cases where immediate action is necessary suspend the licence of the agent where inquiry against such agent is pending or contemplated. The emphasis is on the expression 'immediate action is necessary' and 'inquiry against such agent is pending or contemplated'. Furthermore, this regulation opens with *non obstante* expression 'notwithstanding anything contained in Sub-regulation (1)'. Thus, provisions of Sub-regulation (2) would take precedence and recourse thereto can be taken despite the pendency of proceedings for revocation of licence. In normal course, the procedure prescribed under Regulation 22 has to be followed by the authorities. In a case where immediate or emergent circumstances do not exist, notice should be issued to the agent, before authorities could pass an order in exercise of their powers under Rule 20(1) or 21. However, this may not be quite true in an emergent situation. Where the authorities are of the considered view that the facts and circumstances disclose sufficient grounds for invoking emergent provisions and it is absolutely essential to suspend the licence of the agent, in public interest, there the authorities may do so without serving a notice on the agent, but at the same time, ensuring that post-decisional hearing is granted to the agent and the matter is considered with utmost expeditiousness. The rules of natural justice would have to be read into Regulation 20(2) but with the proviso that post-decisional hearing in emergent situation and subject to the satisfaction of the competent authority would be granted at the very first possible opportunity. Wherever a licence is suspended without hearing, the authorities would be under obligation to grant post-decisional hearing to the agent immediately thereafter and ensure that the authorities after hearing the concerned party and upon due application of mind consider the matter whether the order of suspension should continue

during the period of inquiry or otherwise. Such an approach would be just, fair and would further the object sought to be achieved by these provisions. The expression 'immediate' has to be harmoniously read and construed with other provisions including the provisions of Regulations 20 and 22. The period specified in Regulation 22 would have the effect of rendering the expression 'immediate' ineffective and meaningless. Therefore, applying the principle of harmonious construction, the provisions will have to be given their true and correct meaning and they should be permitted to operate in the field in which they are intended to operate by the Legislature, so as to avoid any conflict between the language of these two provisions. An order of suspension is bound to have serious consequences upon the business of the agent and tantamounts to practically closing the business of the agent. As such to permit an order of suspension, even passed in emergent situations, to continue for indefinite period without hearing the agent would definitely be infringement of the principles of natural justice and basic rule of law as well. The only way in which both these provisions can operate without conflict is to hold that an order of suspension in 'emergent' situation can be passed for recorded reasons without hearing the agent at the first instance but should be granted opportunity of showing cause immediately thereafter and the authorities are expected to apply their mind whether the order of suspension so passed should be permitted to continue or not. This power is an exception to the normal rule of *audi alteram partem* and therefore recourse to it should be only in the case of immediate action in public interest or to prevent breach of statutory provisions, regulations or conditions of licence, failing which serious consequences are bound to flow.

...

11. The exclusion of principles of natural justice by specific legislative provision is not unknown to law. Such exclusion would either be specifically provided or would be imperative consequence of language of the provision. Instead of making a final order without hearing, a temporary action may be necessary without a full hearing. In such cases, 'due process' is specified by offering a full hearing before the final order is made. Of course, such legislation may be struck down as offending due process, if no safeguard is provided against arbitrary action. It is equally settled principle that in cases of urgency, a post-decisional hearing would satisfy the principles of natural justice. Reference can be made to the cases of *Maneka v. Union of India*, (1978) 1 SCC 48 and *State of Punjab v. Gurdayal*, AIR 1980 SC 319. The provisions of Regulation 20(2) clearly indicates exclusion of principles of natural justice, at least at the initial stages, by necessary implication. In cases where the conduct of the agent is such that it would cause serious prejudice to the public interest as well as violates the provisions of the Act, it may be a case of invoking the provisions of the regulations with immediate effect. The provisions of the Act and the regulations classify different situations. The situations relate to providing of right of hearing in terms of Regulation 22 for invoking powers under Regulation 20(1), while in an emergent situation under Regulation 20(2) the post-decisional hearing but within the shortest span would be adequate compliance to the principles of natural justice. We must herein emphasise the need on the part of the authorities to no way prolong the order of suspension even by a day (more) than necessary, without granting hearing to the applicant.

12. It is true that in administrative action, vesting the person of civil consequences, the principles of natural justice should be adhered to. In the case of *M/s. Raj*

Restaurant and Anr. v. Municipal Corporation of Delhi, (1982) 3 SCC 338, the Supreme Court held as under:

> 'Wherein in order to carry on business a licence is required, refusal to give licence or cancellation or revocation of licence would be visited with both civil and pecuniary consequences and as the business cannot be carried on without the licence it would also affect the livelihood of the person. In such a situation before either refusing to renew the licence or cancelling or revoking the same, the minimum principle of natural justice of notice and opportunity to represent one's case is a must. In the present case, no such opportunity was given before taking the decision not to renew the licence. The action disclosing the decision being in violation of the principle of natural justice, deserves to be quashed.'

13. Where certain provisions of a statute do not grant pre-order hearing to the affected party, while in some other provisions of the same statute, such hearing is specifically provided for. The result would be that prior provisions exclude the application of *audi alteram partem* by necessary implication. If nothing else, this is certainly a weighty consideration to be taken into account along with civil consequences, which would entail from such action. In the case of *Mohinder Singh Gill v. The Chief Election Commission, New Delhi,* AIR 1978 SC 851, the Supreme Court held as under:

> 'We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the Rules and inferentially where it has not specified it is *otiose*. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication.' "

20. In the case of *State of Punjab v. Tehal Singh & Ors.*, (2002) 2 Supreme Court Cases 7, the Apex Court enunciated the following principle:-

> "9. Once it is found that the power exercisable under Sections 3 and 4 of the [Punjab Gram Panchayat] Act (1952) respectively is legislative in character, the question that arises is whether the State Government, while exercising that power, the rule of natural justice is required to be observed. It is almost settled law that an act legislative in character - primary or subordinate, is not subjected to rule of natural justice. In case of legislative act of legislature, no question of application of rule of natural justice arises. However, in case of subordinate legislation, the legislature may provide for observance of principles of natural justice or provide for hearing to the residents of the area before making any declaration in regard to the territorial area of a Gram Sabha and also before establishing a Gram Sabha for that area. We have come across many enactments where an opportunity of hearing has been provided for before any area is excluded from one Gram Sabha and included in different Gram Sabhas or a local authority. However, it depends upon the legislative wisdom and the provisions of an enactment. Where the legislature has provided for giving an opportunity of hearing before excluding an area from a Gram Sabha and including it in another local authority or body, an opportunity of hearing is *sine quo non* and failure to give such an opportunity of hearing to the residents would render the declaration invalid. But where the legislature in its wisdom has not chosen to provide for any opportunity of hearing or observance of principles of

natural justice before issue of a declaration either under Section 3 or Section 4 of the Act, the residents of the area cannot insist for giving an opportunity of hearing before the area where they are residing is included in another Gram Sabha or local authority.

10.In the present case, the provisions of the Act do not provide for any opportunity of hearing to the residents before any area falling under a particular Gram Sabha is excluded and included in another Gram Sabha. In the absence of such a provision, the residents of that area which has been excluded and included in a different Gram Sabha cannot make a complaint regarding denial of opportunity of hearing before issue of declarations under Sections 3 and 4 of the Act respectively. However, the position would be different where a house of a particular resident of an area is sought to be excluded from the existing Gram Sabha and included in another Gram Sabha. There the action of the Government being directed against an individual, the Government is required to observe principles of natural justice. For the aforesaid reasons, we are of the view that no opportunity of hearing was required to be given before making declarations either under Section 3 or Section 4 of the Act by the Government."

21. One of the most pertinent facets of principles of natural justice is the likelihood of prejudice which may be caused to the affected party, if pre-decisional hearings were denied. In the present case, no rule or regulation has been brought to our notice, which makes it mandatory for the authority to grant

pre-decisional hearing. The provisions of Section 7-D(e) of the Citizenship Act, 1955 contemplate and empower the Central Government to cancel the registration granted, if it is satisfied that it is necessary to do so in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public. The Legislature, in its wisdom, had worded these provisions to convey wide meaning and connotations to these expressions, and the Court would hardly be even in a position to determine what is in the interest of the sovereignty and integrity of the country. It is a general principle of law that satisfaction of the authority of such proceedings has to be subjective satisfaction and would be open to a narrow judicial review. Administrative action can be questioned on the ground of illegality, irrationality and procedural impropriety of a superior and has prejudicial consequences, as stated by the Supreme Court in the case of *Indian Railway Construction Company v. Ajay* Kumar, (2003) 3 Supreme Court Cases 579.

22. In the case of *Union of India & Ors. v. Smt. Charanjit Kaur*, AIR 1987 S.C. 1057, the Supreme Court had declined to interfere with an order denying issuance of passport to Smt. Charanjit Kaur on the ground that the Court was of the opinion, after examining the record produced before it, including a letter of the Ministry of External Affairs, New Delhi, wherein it was stated that the petitioner therein had links with extremists, and was likely to be engaged in activities detrimental to the security of the State. Similarly, in the present case, the reports of the Special Security Agency are more than adverse to the petitioner.

The authority, without any hesitation, had granted the registration and issued permanent Visa to the petitioner in the year 2006, after completion of post-verification proceedings. While relying upon the report of the Special Security Agency, they have recorded a subjective satisfaction, and passed the impugned order, cancelling the

registration. The satisfaction recorded by the respondents, in view of the report produced before the Court, cannot be said to be without any basis or, *prima facie*, a case of arbitrary action. This decision of the authority can hardly be examined by the Court so as to measure the extent of threat or degree of adverse effect to the interest and sovereignty of the country. The power given to the Appropriate Authority is wide enough, and the cancellation of registration could even be ordered 'in the interests of general public'. It does not appear to us to be a case of irrational or arbitrary decision. The petitioner had hardly suffered any prejudice. Obviously, the petitioner is not going to attack the reports of the Security Agency, and that alone is the cause for cancellation of registration of citizenship granted to the petitioner. In such cases, the authorities are not expected to pass any reasoned orders. In other words, they are not expected to write detailed reasons, particularly when they are relying upon the reports of the Special Security Agency. The grant of pre-decisional hearing to the petitioner, keeping in view the facts

and circumstances of the case, was not mandatory; and in any case, it appears to us that the petitioner has suffered no serious prejudice by denial of such hearing.

23. The concept of hearing is introduced by the Parliament to satisfy the basic rule of law; but where the statute itself does not contemplate such pre-decisional hearing, and the circumstances of the case are of such grave nature that, in the opinion of the authority, it is likely to jeopardise the security and sovereignty of the country, and affect adversely the relationship with foreign country, the decision of the authority can hardly be faulted. The respondents were not required to hold an independent inquiry where the petitioner should have been associated. The respondents, in fact, had acted very fairly by granting registration to the petitioner, and it was only at the post-verification stage that adverse reports were received, and the respondents passed the order in question. There were no allegations of *malafides* in the writ petition; and in fact, none was argued. Once the action has

been taken upon a subjective satisfaction arrived by the authority on the basis of the adverse reports received from the Security Agency, the action can hardly be termed as illegal or arbitrary. In our opinion, the order is not vitiated by any of the grounds of challenge raised in the present Writ Petition.

24. Since we have already indicated that we are not deciding any wider issues and it has been held that in the facts and circumstances of the present case, the impugned order is not vitiated for want of compliance with Principles of Natural Justice nor on any other grounds, it is not necessary to go into any further details.

25. The decision in *Hasan Ali* (supra) must be seen in the backdrop of the factual position. Hasan Ali was born in India, his parents were Iranians but he was educated in India and thereafter, intended to stay in India. He applied for Indian passport, and was called upon to comply with certain

formalities. However, an order was passed cancelling his resident visa permission on 7th October, 2005 and he was deported to Tehran. The sudden deportation was subject-matter of challenge and more so, in the backdrop of the permission to re-enter being granted in his favour. The argument was that the authorities intending to deport him were obliged to disclose to him the reasons for his deportation. It was in this context that Supreme Court placed reliance upon *Sarbanand Sonowal (I)* and other cases. The observations in paragraph 8 of the decision, far from supporting the petitioner's case, would go contrary to the submission before us. The Supreme Court has observed in this paragraph that a procedure of informing the concerned person the reasons for his deportation can be departed from in a case of compelling necessity as National Security, etc. The observations made in *Sarbanand Sonowal (II)* should be seen in the context of safeguards for genuine citizens of India.

26.In this context, it cannot be forgotten that the Citizenship Act, 1955 was amended in 2003, and the provisions such as Section 7-D were inserted therein. The Statement of Objects and Reasons of the Amendment Act 6 of 2004 mentions that it was intended to grant dual citizenship to persons of Indian origin belonging to certain specified countries. That is how the concept of “Overseas Citizen of India” was introduced by inserting Section 2(ee). The term is defined thus:-

> “2(ee) 'Overseas citizen of India' means a person who:- (i) is of Indian Origin being a citizen of a specified country, or (ii) was a citizen of India immediately before becoming a citizen of a specified country and is registered as an overseas citizen of India by the Central Government under sub-section (i) of Section 7-A.”

Section 7-A of the Act under the heading “Overseas Citizenship” provides for Registration of Overseas Citizens. The argument is that the excluding provision, viz., Section 7-B (2) not referring to Articles 14 and 21, which are applicable to persons and not even taking away the fundamental rights

under Article 19 of the Constitution guaranteed to Indian citizens, both Indian citizens and overseas citizens, are on par with each other. They have full protection of law and are equal before law. Therefore, Principles of Natural Justice are in-built in Section 7-D of the Citizenship Act. The law treats both of them equally.

27. It is not possible to accept this contention because on a bare reading of the definition of the term “Overseas Citizen of India” and Section 7-A of the Citizenship Act, it would be clear that the person registered as overseas citizen is of Indian origin. However, he has to be a citizen of a specified country. The Additional Solicitor General is right, therefore, in his submission that this concept is distinct from Indian Citizenship. The petitioner is an “Overseas Citizen” who is capable of being deprived of this legal status by resort to Section 7-D of the Act.

28. For the reasons aforestated, we dismiss this Writ Petition. Rule is discharged. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.